

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS,
FINDING COMCAST OF CALIFORNIA, INC. IN VIOLATION OF ITS FRANCHISE
FOR
FAILURE TO INSTALL AN INSTITUTIONAL NETWORK, FOR FAILURE
TO PROVIDE A STUDIO FOR RESIDENTS TO PRODUCE PEG PROGRAMMING,
FOR FAILURE TO CORRECT GROUNDING ISSUES, AND FOR FAILURE TO
PROVIDE RECORDS AND REPORTS**

WHEREAS, on or about April 15, 1983, the City of Milpitas, California ("City") granted a Franchise Agreement ("Franchise") to Hearst Cablevision of Milpitas;

WHEREAS, on or about January 2, 1990, the City entered into a Franchise Assumption Agreement with Brenmor Cable Partners, L.P. transferring the Franchise to InterMedia, and further extending the Franchise term through April 14, 2003;

WHEREAS, on or about February 20, 1996, the City adopted Resolution No. 6513 ("Resolution") approving the transfer of the Franchise to TCI Cablevision of Georgia, Inc. ("TCI") subject to the conditions of approval contained in Section 2 of the Resolution;

WHEREAS, the Franchise is currently held by Comcast of California, Inc. ("Grantee");
and

WHEREAS, Section 2(E) of the Resolution requires that Grantee shall install and activate an institutional network within the City; and

WHEREAS, Section 2(H) of the Resolution requires that Grantee shall continue to operate the local studio and make the studio available to residents for producing PEG programming; and

WHEREAS, Section 2(O) of the Resolution requires that Grantee shall implement a program of investigating and correcting all drops and taps for improper grounding concurrently with all service calls and repairs and shall investigate the grounding of ninety-five percent (95%) of all subscribers within three (3) years; and

WHEREAS, Section 2(O) of the Resolution further requires that Grantee must submit quarterly reports to the City of the number of subscribers investigated and the number of cases of improper grounding discovered; and

WHEREAS, pursuant to Section II-22-15.13 of the Milpitas Municipal Code, the City may request from the Grantee books and records to determine the accurate computation of franchise fee payments; and

WHEREAS, the City, pursuant to Section III-22-15.13 requested on October 27th 2003, that Comcast respond to the City concerning its calculation of the franchise fee payments due the

City, and Comcast, despite repeated requests by the City, has failed to produce a response to this request; and

WHEREAS, based upon information available to City, Grantee has failed to comply with the Resolution at Section 2(E) the institutional network requirement, at Section 2(H) the local studio requirement, at Section 2(O) the grounding correction requirements, and Grantee has failed to comply with Section III-22-15.13 of the Milpitas Municipal Code; and

WHEREAS, pursuant to Section III-22-13.01 of the Milpitas Municipal Code, if the City finds that Grantee has violated one (1) or more terms of the Franchise it must provide Grantee written notice of the violation; and

WHEREAS, Section III-22-13.01 of the Milpitas Municipal Code further provides that Grantee is to be provided with sixty (60) days within which to cure the alleged violations or the City may thereafter collect penalties per day for each day, or part thereof, the violations continue; and

WHEREAS, pursuant to Section II-22-13.01 of the Milpitas Municipal Code, the City may terminate the Franchise or collect liquidated damages of Five Hundred Dollars (\$500) per day for Grantee's failure to install an institutional network, for failure to provide a studio for residents to produce PEG programming and for failure to correct grounding issues.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MILPITAS, CALIFORNIA DOES RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

1. Each and every above recital is incorporated herein and deemed to be a finding by the City.
2. City hereby finds Grantee to be in violation of the Franchise and the Resolution for failure to install an institutional network, for failure to provide a studio for residents to produce PEG programming, for failure to correct grounding issues, and for failure to provide financial reports.

BE IT FURTHER RESOLVED that City shall, pursuant to Section III-22-13.01 of the Milpitas Municipal Code, provide Grantee with a copy of this resolution which shall constitute written notice of the violation and commence a sixty (60) day period during which Grantee shall cure the Franchise and Resolution violations.

PASSED AND ADOPTED THIS ___ DAY OF _____, 2004, BY THE FOLLOWING VOTE:

AYES: _____

NOES: _____

ABSENT: _____

ABSTAIN: _____

ATTEST:

By: _____
_____, City Clerk

APPROVED AS TO FORM:

_____, City Attorney

APPROVED:

By: _____
_____, Mayor